



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 6

[Docket No. PTO-T-2021-0041]

RIN 0651-AD57

### International Trademark Classification Changes

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) issues this final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification), which is published by the World Intellectual Property Organization (WIPO), and will become effective on January 1, 2022.

**DATES:** This rule is effective on January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571-272-8946, or by email at [TMPolicy@uspto.gov](mailto:TMPolicy@uspto.gov).

### SUPPLEMENTARY INFORMATION:

**Purpose:** As noted above, this final rule incorporates classification changes adopted by the Nice Agreement that will become effective on January 1, 2022. Specifically, this rule adds new goods to, or deletes existing goods from, two class headings to further define the types of goods appropriate to the class.

***Summary of Major Provisions:*** The USPTO is revising § 6.1 of 37 CFR part 6 to incorporate classification changes and modifications, as listed in the Nice Classification (11th ed., ver. 2022), published by WIPO, that will become effective on January 1, 2022.

The Nice Agreement is a multilateral treaty, administered by WIPO, that establishes the international classification of goods and services for the purposes of registering trademarks and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies, for all statutory purposes, to all applications filed on or after September 1, 1973, and their resulting registrations. *See* 37 CFR 2.85(a). Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members of the Committee of Experts, in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on the WIPO website, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and the year of the effective date (e.g., “Nice Classification, 10th edition, version 2013” or “NCL 10-2013”). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of: (1) the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and (2) any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another.

Beginning on January 1, 2023, new editions of the Nice Classification will be published electronically every three years and include all changes adopted since the previous annual version, as well as goods or services transferred from one class to another or new classes that have been created since the previous edition.

Due to the worldwide impact of COVID-19, the International Bureau (IB) at WIPO announced on March 16, 2021, that the 31st session of the Committee of Experts would be held in a hybrid format, with WIPO participating at the WIPO headquarters in Geneva and states participating via an online platform. The annual revisions contained in this final rule consist of modifications to the class headings that were incorporated into the Nice Agreement through e-voting during the 31st session of the Committee of Experts, from April 19-23, 2021. Under the Nice Classification, there are 34 classes of goods and 11 classes of services, each with a class heading. Class headings generally indicate the fields to which goods and services belong. Specifically, this rule adds new goods to, or deletes existing goods from, two class headings, as set forth in the discussion of regulatory changes below. The changes to the class headings further define the types of goods appropriate to the class. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to article 1.

### **Discussion of Regulatory Changes**

The USPTO is revising § 6.1 as follows:

In Class 30, the wording “artificial coffee” is amended to “substitutes therefor.”

In Class 32, the wording “non-alcoholic” is deleted after “other.” The wording “non-alcoholic” is added after “making.”

### **Rulemaking Requirements**

***A. Administrative Procedure Act:*** The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’*

*Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 575 U.S. at 101 (Notice and comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

***B. Regulatory Flexibility Act:*** As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is required. *See* 5 U.S.C. 603.

***C. Executive Order 12866 (Regulatory Planning and Review):*** This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

***D. Executive Order 13563 (Improving Regulation and Regulatory Review):*** The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives;

(6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

***E. Executive Order 13132 (Federalism):*** This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

***F. Executive Order 13175 (Tribal Consultation):*** This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

***G. Executive Order 13211 (Energy Effects):*** This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

***H. Executive Order 12988 (Civil Justice Reform):*** This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

***I. Executive Order 13045 (Protection of Children):*** This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

***J. Executive Order 12630 (Taking of Private Property):*** This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

***K. Congressional Review Act:*** Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

***L. Unfunded Mandates Reform Act of 1995:*** The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 et seq.

***M. National Environmental Policy Act of 1969:*** This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 et seq.

***N. National Technology Transfer and Advancement Act of 1995:*** The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note)

are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

***O. Paperwork Reduction Act of 1995:*** This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

***P. E-Government Act Compliance:*** The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects in 37 CFR Part 6**

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

#### **PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT**

1. The authority citation for part 6 continues to read as follows:

**Authority:** Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

2. Revise § 6.1 to read as follows:

## **§ 6.1 International schedule of classes of goods and services.**

### **GOODS**

1. Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

4. Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

7. Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural



implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

8. Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

9. Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for persons with disabilities; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments; music stands and stands for musical instruments; conductors' batons.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headwear.
26. Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.
27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.
28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.
29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food.
30. Coffee, tea, cocoa and substitutes therefor; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).
31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.
32. Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other preparations for making non-alcoholic beverages.
33. Alcoholic beverages, except beers; alcoholic preparations for making beverages.
34. Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers' articles; matches.

## **SERVICES**

35. Advertising; business management, organization and administration; office functions.
36. Financial, monetary and banking services; insurance services; real estate affairs.

37. Construction services; installation and repair services; mining extraction, oil and gas drilling.

38. Telecommunications services.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services; food and drink preservation.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, aquaculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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